STATE OF MICHIGAN

FILED

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

NOV -2 1998

Ameritech Michigan's submission on performance measurements, benchmarks, and reporting in compliance with the October 2, 1998 Order in MPSC Case No. U-11654.	MICHIGAN PUBLIC SERVICE COMMISSION Case No. U-11830

AMERITECH MICHIGAN'S PROPOSAL IN RESPONSE TO THE COMMISSION'S OCTOBER 2, 1998 ORDER REGARDING PERFORMANCE MEASUREMENTS, BENCHMARKS, REPORTING, AND REMEDIES

DICKINSON WRIGHT PLLC
John M. Dempsey (P30987)
Michael G. Vartanian (P23024)
Business Address:
215 S. Washington Square, Suite 200
Lansing, Michigan 48933-1816
Telephone: (517) 371-1730

AMERITECH MICHIGAN
Craig Anderson (P28968)
444 Michigan Avenue, Room 1750
Detroit, MI 48226
Telephone: (313) 223-8033

Theodore Livingston
Christoper Binning
Demetrios Metropoulos
MAYER, BROWN & PLATT
190 South LaSalle Street
Chicago, IL 60603
Telephone: (312) 782-0600

TABLE OF CONTENTS

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Ameritech Michigan's submission on performance measurements, reporting, and benchmarks in compliance with the October 2, 1998 Order in MPSC Case No. U-11654.	))))	Case No. U-11830

AMERITECH MICHIGAN'S PROPOSAL IN RESPONSE TO THE COMMISSION'S OCTOBER 2, 1998 ORDER REGARDING PERFORMANCE MEASUREMENTS, BENCHMARKS, REPORTING, AND REMEDIES

Ameritech Michigan, in accordance with the October 2, 1998 Order of the Commission in Case No. U-11654 (the "*Phone Michigan Order*") respectfully submits the following proposal regarding performance measurements, reporting, benchmarks, and remedies.

I. INTRODUCTION AND SUMMARY

Ameritech Michigan is, and has been, committed to competition in the local exchange market. And competition has made significant strides in the Michigan marketplace: In Ameritech Michigan's territory, competing local exchange carriers ("CLECs") serve over 200,000 access lines in the state, and 71 collocated wire centers provide access to nearly 1.5 million residential access lines and over 1.1 million business access lines. Ameritech Michigan continues to work on a business-to-business basis with the numerous CLECs providing local service in Michigan, carrying out the intent of the federal Telecommunications Act of 1996 (the "1996 Act") and the Michigan Telecommunications Act ("MTA").

Through the process of negotiation, arbitration, Commission approval, and judicial review established by the 1996 Act, Ameritech Michigan and its competitors

have entered into interconnection agreements that define the terms of their business relationships, including the standards of performance. Ameritech Michigan measures and reports its performance against those standards today, and has been doing so for two years. Ameritech Michigan has worked, and will continue to work, with CLECs to improve performance results. As part of this customer-supplier relationship, Ameritech Michigan has dedicated account managers and service managers whose primary functions are to monitor and improve performance levels. Above and beyond its interconnection agreements, Ameritech Michigan's operational guidelines, implementation plans, and thousands of hours of business-to-business discussions demonstrate its commitment to this competitive process.

The purpose of this filing is to propose a holistic plan to address the related issues of performance measurement, reporting, benchmarks, and remedies, and to describe the procedure by which that plan must be implemented. The basic tenets of Ameritech Michigan's proposal as described in this filing can be summarized as follows:.

- Performance measurements that maximize the customer/supplier business relationship as defined in interconnection agreements, continue the evolution of the marketplace from a regulatory framework to commercial business agreements, and provide for symmetry in obligations to ensure end user service satisfaction;
- Measurements and benchmarks that are both meaningful to business operations and cost-effective, with a focus on outcomes;
- Benchmarks and remedies applied to measurements that affect a business outcome;
- Proactive monitoring and tracking of indicator measurements, which provide useful operational management tools for both the customer and supplier;
- Remedies that are commensurate with the "miss," so that good service performance, rather than remedies, remain the preferred option, thus benefiting the end user;
- A proposal that can be implemented, administered, monitored, audited and relied upon by both parties to the business agreement, and by this Commission in its enforcement role.

The remaining sections of this proposal address the content of Ameritech Michigan's proposed guidelines for performance measurement. As the Commission recognized in its *Phone Michigan Order*, the topic of performance measures involves four components: (1) Measurements (Section II); (2) Reporting (Section III); (3) Benchmarks (Section IV); and (4) Remedies (Section V). Ameritech Michigan's proposal addresses all four of these components, and provides a plan for implementing them (Section VI).

Section II defines Ameritech Michigan's proposed performance measurements themselves, identifying the processes and objectives to be measured, along with the separate categories of products, services, and transaction types into which those measurements will be divided. It also discusses the cost-benefit principles, common to all of the proposed measurements, that must govern any consideration of performance reporting. Further, Section II discusses the need for CLECs (particularly those CLECs that are on the verge of becoming wholesalers themselves) to provide reciprocal reporting of applicable performance measures. This mutuality is consistent with the reciprocity of contractual obligations and of successful business relationships that allow each company to provide quality service to its customers (be they wholesale customers or end users), and that allow customers to choose knowledgeably, and migrate seamlessly, among competing providers.

Ameritech Michigan's proposal encompasses 31 performance measures, comprising approximately 133 categories in all. The proposal includes 18 measures of performance *outcomes* — the ultimate products, services, or functions that Ameritech Michigan makes available to CLECs — including the average time to install service, the percentage of 911 update files not processed by the next business day, and the "trouble report rate" on facilities. In addition, Ameritech Michigan will offer to provide 13 measures of performance *indicators*: Data that provide additional information, but that do not reflect Ameritech Michigan performance or service-affecting outcomes. Rather,

these measures provide information as to steps in the process that leads to those outcomes, or as to occurrences beyond Ameritech Michigan's control that do not reflect on the quality of Ameritech Michigan services. Indicators may allow for more proactive and effective analysis of outcomes, but they are not themselves outcomes.

Section III describes the form and method of performance reporting. Ameritech Michigan advocates monthly reporting of its performance with respect to each CLEC (with over 1,000 lines or loops in service) with which it has an interconnection agreement, with respect to all CLECs as a whole, and with respect to any comparable retail functions, where such analogs exist. To verify the accuracy of these reports, Ameritech Michigan proposes an annual audit, preferred by an independent outside auditor, covering performance data for all CLECs. This properly balances the goal of verifiable reporting, and the Commission's concerns that underlying data be made available for verification, against the costs and intrusion of the audit process. In addition, CLECs can obtain information about the raw data supporting their performance results in the course of informal discussions or the dispute resolution process specified in the interconnection agreement to reconcile and resolve any disagreements as to measurement calculations. Pursuant to the terms of the governing interconnection agreements and applicable law, CLECs will not be given access to the confidential data of Ameritech Michigan or their other competitors.

Section IV discusses the benchmarks against which the performance measures proposed in Section II are to be measured. Performance should be compared to a benchmark only in the case of outcomes. For the "indicator" measurements, the development of performance benchmarks, and the assessment of remedies to CLECs for failure to meet those benchmarks, would be either redundant or unfair. Where performance indicators simply measure a step in the process leading to a performance outcome, the appropriate benchmark and remedy are already addressed with respect to the outcome as a whole, and there is no need for duplication. Failure to meet a performance

standard on a step in the process would not necessarily have any relationship to any harm sustained by the CLEC. Where performance indicators are affected primarily by factors outside Ameritech Michigan's control, it would be unjust to hold Ameritech Michigan to a standard. Further, a performance measurement plan that focuses on key outcomes is significantly easier and less expensive to implement, track and report than an endless list of intervals around intermediate process points for implementing each service.

Ameritech Michigan's proposed performance benchmarks for outcome measurements follow one of two alternative approaches. Where there is a reasonably comparable outcome in the retail environment, retail performance sets the benchmark. Where no reasonable retail analog exists, most notably in the case of unbundled loops (which Ameritech Michigan provides to CLECs but not to itself) a numerical benchmark is derived using available contractual standards, service quality standards, and business experience, including process studies of electronic and manual procedures.

Section V develops a system of self-executing remedies to be paid where the measurement of a performance outcome does not meet the applicable benchmark. There are two principles that must guide any remedial system. First, the purpose of performance remedies, just like any system for liquidated damages, is to compensate the affected CLEC for harm sustained as a result of not meeting the performance standard, not to impose random or arbitrary punishment on Ameritech Michigan. Ameritech Michigan thus proposes that remedies be calculated in relation to the charge for the applicable service outcome, or in relation to the amounts incurred by the CLEC to counteract substandard performance. The remedy, in terms of its application and level, should fit the business impact to the CLEC. Never should a CLEC prefer the remedy over quality performance. The objective is to run and maintain business operations, not to create perverse incentives or award windfalls to CLECs.

Second, remedies for substandard performance should not be assessed unless Ameritech Michigan has truly failed to meet the benchmark. To this end, generally

accepted techniques of statistical analysis are a necessary first step to determine whether apparent discrepancies in performance results are attributable to random chance, or whether some non-random factor is present. The latter result, however, should not result in an irreversible finding of discrimination. Rather, a statistical finding of apparent disparity should only create a rebuttable presumption of a contractual breach. By way of analogy, when an airport metal detector is triggered, no one is immediately incarcerated; rather, the alarm simply warrants further investigation. The same is true of apparently adverse performance data.

In the interest of efficiency and speed, the applicable remedy would be self-executing: that is, it would be paid immediately upon failure to meet the governing benchmark. Subsequently, a cooperative, focused investigation may well reveal, however, that the potential disparity is attributable to factors other than Ameritech Michigan. In such instances, the dispute resolution procedures already set forth in Ameritech Michigan's interconnection agreements would provide a ready means to recoup part or all of the applicable remedy.

Section VI proceeds to the practical and legal realities of implementing the above plan. It describes the de-regulatory framework of the 1996 Act, its implications for this proceeding, and the method by which the Commission can address the subject of performance measures within that framework. As Ameritech Michigan pointed out during the *Phone Michigan* proceedings, performance measurements are contractual issues, not subjects for regulation. To the extent that such measures are necessary to monitor and enforce agreements, they must be defined through the same process of business negotiation, arbitration where agreement cannot be reached, Commission approval, and judicial review that creates the agreements to which those measures relate. Thus, to the extent that the Commission seeks to address performance measures here, it must work within the construct of the competitive marketplace envisioned under the Act. This is accomplished not by prescriptively imposing a lengthy list of performance

regulations, but by setting models to guide future negotiations and arbitrations. For its part, Ameritech Michigan commits that it will offer to amend its existing agreements to incorporate the substantive terms of its proposed model.

The affidavit of Susan West, and her supporting schedules, provide detailed support for the recommendations that follow. To facilitate the Commission's review of this proposal, West Schedule 1 summarizes the various proposed outcome and indicator measurements, the proposed benchmarks for outcome measurements, and the applicable formula for remedies. West Schedule 2 presents a "User Guide" that provides detailed information and definitions relative to each proposed measurement. Finally, the affidavit of Daniel S. Levy, an expert statistician and economist, describes the need for, and a simple approach to, statistical analysis of performance results.

II. PROPOSED PERFORMANCE MEASUREMENTS

A. General Issues

Ameritech Michigan's proposal advances 31 performance measures, broken down into 133 categories, covering a full complement of products, services, and functions, and serving a variety of objectives. However, there are common principles that drive all of them. The first is the need for any measurement plan to balance the burdens of performance reporting with the benefits of the information provided, *i.e.* there is a cost-benefit analysis that must be considered. The second is the requirement of mutuality of obligation: Any measurement plan should be implemented not only by Ameritech Michigan, but also by other carriers, to the extent that they provide services or owe duties to Ameritech Michigan that mirror Ameritech Michigan's services or duties towards them. In the same vein, a consistent measurement plan should apply to all providers of wholesale service (including those CLECs that enter the wholesale market) to give retail providers an informed choice of wholesalers and thereby encourage better quality service.

1. **Balance Between Burdens And Benefits**

Performance measurements may be important, but they are costly to implement. Ameritech Michigan's costs of compiling and reporting performance measures for the wholesale unit are already quite substantial. Ameritech's annual cost of performance measurements is approximately $20 million regionwide. West Aff. ¶ 18. The incremental cost of wholesale performance measurements — reported monthly in over 100 categories, for over 50 CLECs, across five states — is approximately $1.25 million per year, plus $1 million for initial development and implementation (including the design of systems and procedures, both electronic and manual). *Id.* These costs include the deployment of a full-time staff of 5 persons, plus the assignment of computer programmers and network personnel, plus the engagement of expert consultants. *Id.* The following proposals, if implemented, would effectively double these incremental costs. *Id.*

To reflect these business realities, any proposed performance measurement must pass a two-part test: (1) It must provide a meaningful measure of performance, and if so, (2) reporting that measure must be feasible and cost-effective. The same two-step test governs the level of disaggregation for each measure. A given category of data should be reported separately only when disaggregation provides meaning and is cost-effective. A measurement category provides meaning when performance results within that category are consistently and materially different from results in other categories. It is cost-effective when the benefit provided, in terms of increased utility of reporting, meets or exceeds the cost of gathering and measuring data at that level of detail.

Even for those measurements and measurement categories that pass the tw test of meaning and cost-effectiveness, as the measures proposed here do, there significant cost to Ameritech Michigan. Any meaningful measurement plan money as it takes time, resources, systems, and people to support it. Thu Commission should, if it adopts the measurement guidelines set forth

sections, also adopt a mechanism for Ameritech Michigan to recover the very substantial costs of complying with them.

2. Reciprocal Reporting Requirements

One of the bedrock characteristics of the contractual process established by the 1996 Act which must govern the course of this proceeding is mutuality of obligation. The statutory provisions of the 1996 Act set forth duties for all carriers, not just incumbents. The MTA also recognizes this principle of consistent obligation across carriers, in that it regulates services, not providers. CLECs should be required to provide reciprocal reporting of performance in areas where they provide services, comparable to those described herein, to Ameritech Michigan or other carriers. This is typical of any customer-supplier relationship: At times Ameritech Michigan will itself be a customer.

Indeed, as a natural consequence of competition in the retail market, CLECs are now becoming wholesalers themselves. Any performance guidelines that emerge from these proceedings should apply uniformly to all wholesalers, to ensure that all retailers can make a fully informed choice among suppliers, to the ultimate benefit of the end user.

Reciprocal Obligations Owed by CLEC Retailers. The duty of interconnection is one where the need for mutuality and reciprocity is readily apparent. Interconnection trunks carry traffic both ways, and the compensation for transport and termination of traffic is expressly defined in the 1996 Act to be "reciprocal." CLECs are responsible for engineering, installing, and monitoring all interconnection trunks to transport traffic from their end users to Ameritech end users. West Aff. ¶ 139. In these situations, the CLEC should be required to provide reports of call attempts blocked, along with computations of the percentage of due dates not met with respect to interconnection trunks. *Id.*

CLECs are also required, by their interconnection agreements, to provide reciprocal collocation arrangements to Ameritech Michigan. *Id.* ¶ 141. Therefore, it is only reasonable for CLECs to provide the same collocation measurements, and adhere to

the same standards, proposed below by Ameritech Michigan: namely, the average time to respond to a physical collocation request, the average time to provide a collocation arrangement, and the percentage of due dates missed with respect to collocation arrangements. *Id.*

In a truly competitive market, end users can move between providers in either direction with equal ease, regardless of their current provider's identity. Thus, in some cases, Ameritech Michigan will "win back" customers that previously transferred their service to CLECs. *Id.* ¶ 142. Thus, just as Ameritech Michigan provides CLECs with access to Customer Service Records ("CSRs") upon request, so should the CLECs be required to provide their own CSRs. Unfortunately, however, Ameritech Michigan has encountered delays, and some outright refusals, from CLECs, which forces Ameritech Michigan representatives to assume win-back accounts as-is before they can work with the customer to improve service. *Id.* ¶ 143. Such delays hinder customers from choosing among providers based on service, and they reduce Ameritech Michigan's ability to compete effectively on that basis. Thus, just as Ameritech Michigan proposes that it measure the timeliness of access to CSRs, CLECs should report the same information. *Id.* ¶ 142.

While it is impossible at this time to forecast all future services that CLECs may agree to provide, it is clear that the Commission's guidelines in this proceeding should generally provide that CLECs who wish to adopt them in their agreements should also provide reciprocal reporting in all areas where they provide Ameritech Michigan with services comparable to those received by the CLECs. After all, the ultimate objective is to ensure that each carrier is able to service its end users in the most efficient and effective manner.

CLEC Wholesalers. As competition in the retail local exchange market continues to grow, CLECs are now entering the wholesale market, in competition with Ameritech Michigan. For example, this past July, WorldCom gave an extensive

marketing presentation in which it announced that it will provide wholesale local service. beginning with offerings in seven cities, including Detroit. West Aff. ¶ 144. And at a recent industry trade forum, TCG and Frontier rolled out similar plans. *Id.*

Ameritech Michigan has worked to bring about competition in the local retail market, and it welcomes competition in the wholesale market as well. But competition must be fair, and more importantly, retailers should have access to performance information for all their suppliers. That is how they make the best choice for themselves, and thus the best choice for their end users. Performance measurement, reporting, benchmarks, and remedies should be consistent across suppliers. Thus, the Commission should make clear that any performance guidelines adopted herein apply across the board to all wholesale providers.

B. Proposed Measurements

A key element of a successful performance plan is a clear definition of what is to be measured, how it is to be measured, and what business rules apply. Ameritech Michigan's proposed measurements are summarized below. These measurements incorporate guidance from several sources: (1) Ameritech Michigan's interconnection agreements and subsequent working discussions with CLECs; (2) the Commission and its Staff, and in particular its comments on Ameritech Michigan's 1997 application under § 271; and (3) the FCC, particularly its order on the Ameritech Michigan § 271 application, and its more recent Notice of Proposed Rulemaking ("NPRM") on performance measures.

A preliminary note is necessary as to the scope of the measures that follow. Ameritech Michigan's retail representatives input transactions electronically, and Ameritech Michigan offers CLECs electronic access as well. West Aff. ¶¶ 35-36. Some CLECs, however, still choose to submit transactions manually, *e.g.* by facsimile. *Id.* ¶ 35. This requires Ameritech Michigan to do the CLEC's job of preparing and

submitting an electronic entry. *Id.* This makes manual and electronic submissions inherently incomparable. *Id.* While Ameritech Michigan has been willing to agree to process manual submissions as an accommodation to CLECs, it is not responsible, and should not be held responsible, for any resulting delays associated with the extra work required when Ameritech Michigan receives a manual submission. *Id.* Manual submission should only be intended as a transitional measure, to be phased out as CLECs implement the electronic interface. *Id.*

For these reasons, the FCC has stated that "[b]ecause incumbent LECs access their systems electronically for retail purposes, . . . incumbent LECs need measure only the access they provide electronically to competing carriers." NPRM, ¶ 40. Thus, all of the outcome measures described in subsection 1 below address electronically submitted transactions only. Where Ameritech Michigan proposes to provide information on manual submissions, that information will be presented separately, as an indicator measure, in section 2 below.

1. **Performance Outcomes**

Eighteen of Ameritech Michigan's proposed measurements, over half of the total measures proposed, address key competitive outcomes, many of which correspond to statutory and contractual obligations. These outcome measurements pinpoint service-impacting operations.

a) Pre-Ordering

Average Response Time. Ameritech Michigan's first proposed measurement relates to pre-ordering, the process by which CLEC and Ameritech Michigan retail customer representatives alike obtain information to place an order. Ameritech Michigan proposes to measure the average speed of its response to pre-ordering inquiries made by CLEC representatives, segregated by type of information requested,. West Aff. ¶¶ 31-34; West Sch. 1, measure 1.

b) **Order Completion**

Average Installation Interval. This measurement would compare the average length of time it takes Ameritech Michigan to complete orders for requesting carriers with the average length of time it takes to complete comparable retail orders. West Aff. ¶ 38; West Sch. 1, measure 2. Following the Commission's direction, in its comments on Ameritech Michigan's 1997 application under ¶ 271, Ameritech Michigan proposes separate reporting by order type (*e.g.*, residential, business, and Centrex) and by whether the order requires a "field visit" by an Ameritech Michigan technician. West Aff. ¶¶ 38-39.

Three issues raised in the *Phone Michigan* proceedings are pertinent here. First, the Commission determined in those proceedings that "orders should be considered completed only after Ameritech Michigan has notified [BRE] of completion." *Phone Michigan Order*, p. 4. The measure proposed here measures only the length of time it takes Ameritech Michigan to complete orders for competing carriers; that is the time perceived by the end user. Adding the completion notice interval to CLEC orders, in the manner the *Phone Michigan Order* suggests, does not provide a valid comparison to retail operations (which do not have a notification interval). West Aff. ¶ 43. Rather, it would skew results, create a false appearance of disparity where none exists, and reduce the comparability and thus the utility of the measure. *Id.* Further, the average interval for completion notification is already captured in a separate measurement below. Including the same interval in this measure would be redundant. *Id.*

Second, the *Phone Michigan* ALJ "found that delaying events [such as a customer not being ready for the scheduled service appointment] do not require exclusion of an order from the performance requirements. Rather, she found that such events require an hour-for-hour and day-for-day extension based on the length of the delay." *Phone*

Michigan Order, p. 5; see also *id.* p. 9 (affirming ALJ's findings).[1] Reporting that degree of detail is not feasible under Ameritech Michigan's ordering and provisioning systems. Consistent with industry practice, those systems can measure the installation interval only in days, for wholesale and retail orders alike; they do not record completion to the hour and minute, and they certainly do not have the stopwatch function that would be required to follow the *Phone Michigan* approach. West Aff. ¶ 48. Recording and tracking the hour and minute of retail order entry and completion would require a complete redesign of Ameritech's ordering and provisioning systems, at an estimated cost of over $16 million over one to two years. *Id.* ¶¶ 44-46. And calculating hour-for-hour extensions would require Ameritech Michigan's service representatives (wholesale and retail) to estimate the time associated with delaying events, maintain separate diaries to record it, and then manually redo the calculation of the installation interval. *Id.* ¶ 46. This would impose a significant burden on Ameritech Michigan, distract its personnel from serving CLECs and end users alike, and introduce an element of judgment that would reduce the meaningfulness of the measure. *Id.* ¶ 48.

Accordingly, Ameritech Michigan recommends that those orders that experience delaying events be excluded from the measurement calculation, consistent with two years' practice under present interconnection agreements. Ameritech Michigan's approach is also consistent with the FCC's recommendation in its "roadmap" order on Ameritech Michigan's § 271 application. There, the FCC stated (p. 31) that "[i]f an order completion date can be determined either by Ameritech or by the desires of the customer, the latter should not be included in Ameritech's performance measure."[2]

---

[1] Delaying events, and "force majeure" events, are defined in the applicable interconnection agreements. West Aff ¶ 46.

[2] Hour-and-minute reporting is possible for Ameritech Michigan's repair and maintenance systems, and Ameritech Michigan will accordingly "stop the clock" for delaying events in its proposed measurements of repair and maintenance intervals. West Aff. ¶ 78.

Finally, the *Phone Michigan Order* (p. 9) would require separate reporting for Interim Number Portability ("INP") orders. Going forward, such presentation would have no meaning and would not be cost-effective. All existing INP in the state is scheduled to be converted to long-term number portability ("LNP") by year-end. New orders for INP are no longer accepted. West Aff. ¶ 49. Based on this schedule, there is no reason to have disaggregation for INP orders, since there will be no such orders.[3]

Confirmed Due Dates Not Met. This would measure the percentage of orders completed after the due date, where the reason for delay is attributable to Ameritech Michigan. West Aff. ¶¶ 52-54; West Sch. 1, measure 3. For the reasons described under the "average installation" measure, an order should be considered complete upon installation, without regard to the time incurred in sending a completion notice.

c) **Order Status**

Average Reject Notice Interval. Ameritech Michigan's order interface and service representatives check CLEC orders for format and content. West Aff. ¶ 56. CLEC orders that are improperly formatted, or that do not contain necessary data, are returned to the CLEC with a rejection notice. *Id.* The purpose of this measurement is to assess the amount of time it takes Ameritech Michigan to notify the competing carrier that an order has been rejected, so that the CLEC may correct that order. *Id.; see* West Sch. 1, measure 4.

Average Completion Notice Interval. This measures the interval between the physical completion of an order and the time the CLEC receives notice of completion. West Aff. ¶ 58; West Sch. 1, measure 6.

---

[3] Reporting is not feasible under LNP. With LNP, the provisioning process is between the CLEC and the third-party database administrator, and Ameritech Michigan does not have the information to calculate the measurement. *Id.* ¶ 50.

d) **Installation Trouble Reports**

To help assess the accuracy and quality of order provisioning, Ameritech Michigan proposes that it measure the rate of new installations, wholesale and retail, reporting "trouble" within 7 calendar days of installation. West Aff. ¶ 64; West Sch. 1, measure 8. This measure is known as "installation trouble reports" or "new service failures." The 7-day period is optimal for capturing problems associated with provisioning and installation, as distinguished from regular maintenance issues. West Aff. ¶ 66.

e) **911 Database Update and Accuracy**

This Commission has placed special emphasis on the timely and accurate processing of updates to the databases that support 911 emergency services. In recognition of that concern, and of the importance of 911 services to the public health, safety and welfare, Ameritech Michigan devotes 2 outcome measurements (along with four additional "indicator" measurements described in section B.2 below) to the 911 process.

Customer Record Update Files Not Processed by the Next Business Day (Received Electronically). Ameritech Michigan would first report the timeliness of 911 database updates, measuring the percentage of files not processed by the next business day after Ameritech Michigan receives them electronically from the CLEC. West Aff. ¶ 74; West. Sch. 1, measure 11. The same information would be reported with respect to updates processed for Ameritech Michigan, which include data for both retail or resale. (The corresponding measure for manually submitted updates appears in Section B.2 below.)

Erred Customer Record Update Files Not Returned by Next Business Day (Received Electronically). Similarly, Ameritech Michigan proposes to report the timeliness with which it informs CLECs of errors in their electronic update files, in order to facilitate prompt correction. West Aff. ¶ 77; West Sch. 1, measure 15. Again, this

would be compared to the speed of return for Ameritech Michigan's errors, which includes both retail and resale. The measurement for manually submitted updates, and the measurement of the overall error rate, is discussed in Section B.2 below.

f) **Repair and Maintenance**

Mean Time to Repair. The purpose of this measurement is to allow a CLEC to assess whether its customer's services are repaired in a time frame comparable to that of Ameritech Michigan's retail customers. West Aff. ¶¶ 78-82; West Sch. 1, measure 17. Instances in which trouble is reported, but investigation reveals there is no problem with Ameritech Michigan facilities, would be excluded, so as to focus on real repair needs and activities. West Aff. ¶ 79.

Trouble Report Rate. This measurement assesses whether CLEC customers experience more frequent incidents of trouble than Ameritech Michigan's end users, which may in turn indicate differences in the underlying quality of the network components. West Aff. ¶¶ 83-86; West Sch. 1, measure 18. Again, trouble reports that do not reflect problems in Ameritech Michigan's network would be excluded, West Aff. ¶ 85, to better correspond to the measurement's ultimate objective: assessing the quality of network components, rather than the ability of CLECs to screen and resolve troubles before sending them to Ameritech Michigan. Trouble reports on new installations are already covered under the measure of Installation Trouble Reports above, and would be excluded here to prevent double-counting. *Id.*

g) **Billing**

Daily Usage Timeliness. The purpose of this measurement is to assess the timeliness with which Ameritech Michigan provides requesting carriers with their customers' usage records. CLECs in turn use this information to bill their end users. Ameritech Michigan proposes to measure the percentage of usage records not transmitted

within 5 days. West Aff. ¶¶ 92-93; West Sch. 1, measure 21. This 5 day standard is also used by AT&T in its own established process for measuring Ameritech Michigan performance. West Aff. ¶ 92.

There is no retail analog for this function. *Id.* ¶ 93. The process of putting together a consolidated usage file that captures and summarizes all of the customer call records associated with a given CLEC adds an extra day of processing that does not occur on the retail side. *Id.* CLEC data from each data processing office is sent to a single location, gathered into a statewide single file, and further consolidated at the regional level for the CLEC's convenience. *Id.*

h) **General Measurements**

Percentage of Time Interface Is Unavailable. The purpose of this measurement is to assess whether Ameritech Michigan provides nondiscriminatory access to its electronic interfaces. Ameritech Michigan proposes to measure the percentage of scheduled time (excluding regular downtime) that each interface is available to accept input. West Aff. ¶ 97; West Sch. 1, measure 24.

Average Speed of Answer: Operator Services and Directory Assistance ("OS/DA"). Ameritech Michigan proposes to measure the time of response of Operator Services and Directory Assistance operators or databases. West Aff. ¶¶ 98-100; West Sch. 1, measure 27. Ameritech Michigan proposes separate measures for OS and DA because they involve separate processes that can produce significantly different results. West Aff. ¶ 102. CLEC and retail customer calls, however, cannot be desegregated for comparison because Ameritech Michigan's systems do not and cannot differentiate between them. *Id.* Ameritech Michigan's automatic call distributor ("ACD") automatically submits all incoming calls to the next available operator on a first come, first served basis. *Id.* ¶ 100. Once the CLEC's call is submitted to the ACD, the system

is unaware of the source of the call, and processes all calls on the same nondiscriminatory basis. *Id.*

The best possible protection against discrimination is the technical impossibility of doing so. It would be very expensive (around $350,000 per switch or $9.4 million for the Ameritech region as a whole) and time-consuming (12 to 24 months) to deploy the software and facilities necessary to differentiate between CLEC and retail traffic coming into the OS/DA systems. *Id.* ¶ 100. In addition, Ameritech would incur about $700,000 regionwide to create the capability to generate an appropriate report. *Id.* It therefore would be counterproductive for Ameritech Michigan, at significant expense, to effectively create the ability to discriminate where no such capability even exists today, simply to prepare a report. *Id.* For the same reasons, no remedy is proposed for this measure, as the existing systems already provide sufficient protection.

i) **Interconnection**

Call Attempts Blocked. Ameritech Michigan's principal measurement for interconnection performance is the rate of blockage on call attempts from Ameritech Michigan customers that are to be routed to and terminated on CLEC networks, as compared to the blockage rate for traffic that both originates and terminates on Ameritech Michigan facilities. West Aff. ¶¶ 105-110; West Sch. 1, measure 28. A call attempt is "blocked" when a customer is unable to complete a call on that attempt due to network congestion. West Aff. ¶ 106. The rate of "call attempts blocked" is thus defined as the number of blocked call attempts, minus the number of blocked call attempts that are successfully re-routed, divided by the number of total call attempts and expressed as a percentage. *Id.* ¶ 107. Ameritech Michigan proposes to report blockage percentages separately by CLEC, and by destination (i.e. interLATA vs. intraLATA traffic). *Id.* ¶ 108. Ameritech Michigan also proposes to report the percentage of call attempts blocked for CLEC-terminated traffic in total, as compared to Ameritech-only traffic. *Id.*

Ameritech Michigan designed and implemented the Call Attempts Blocked measurement as an improvement upon the "trunk blockage" statistics presented in its 1997 long-distance application, and in accordance with the FCC's order on that application. *Id.* ¶¶ 109-110. Trunk blockage reports are not designed to measure overall network performance, but as a tool for network engineers to determine if certain facilities are functioning consistent with their design criteria (and specifically, the average expected blocking rate). *Id.* ¶ 109. They do not measure the volume of traffic that is actually affected. *Id.* Also, trunk blockage reports focus only on the busy hour, and do not reflect performance on non-busy hour traffic. *Id.*

Average Time to Respond to a Physical Collocation Request. This proposed measure computes the average time, in days, between Ameritech Michigan's receipt of a complete and accurate collocation order and its response (*e.g.*, by providing information on space availability and costs). West Aff. ¶ 111; West Sch. 1, measure 29.

Percent of Due Dates Missed in Provision of Collocation Arrangements. This proposed measure is based upon the percentage of firm collocation orders not completed by the committed due date. West Aff. ¶ 111; West Sch. 1, measure 31.

2. Performance Indicators

The additional measurements and categories proposed in this section provide information as to steps in the process leading to the outcomes described above, or as to CLEC activities and functions rather than Ameritech Michigan activities and functions. Because trends in these measures are already reflected in the outcome measurements, or are not properly attributable to Ameritech Michigan, it would not be proper to set benchmarks or provide remedies for failure to meet them. Rather, such information would be presented for purposes of additional reference and investigation, to help highlight areas for operational improvement and to identify future problems in advance.

a) **Order Status Measurements**

Average FOC Notice Interval. Once a properly formatted order passes the edit checks in the ordering interface, Ameritech Michigan provides the CLEC with a notice confirming the receipt of a firm order from the CLEC, which is commonly referred to as a "Firm Order Confirmation" or "FOC." West Aff. ¶ 57. The purpose of this measurement is to assess the amount of time it takes to send such confirmation to the competing carrier. *Id.*; West Sch. 1, measure 5. The time that passes from order receipt to order confirmation is part of the overall process measured in the Average Installation Interval described above. *Id.* ¶ 161. Thus, this indicator simply breaks out one stage of the provisioning process.

b) **Held Order Measurement**

Average Interval for Past Due Orders. This measure addresses the average number of days to complete orders not completed on their original due date. The Average Interval for Past Due Orders measurement will enable a requesting carrier to determine whether the average period that its orders are completed after the committed date is longer than the average period for similar retail LEC orders (that is, whether Ameritech Michigan treats past-due retail orders with any greater urgency than their wholesale counterparts). West Aff. ¶¶ 61-63; West Sch. 1, measure 7. By definition, all of the orders here are already included within the outcome measure for Confirmed Due Dates Not Met, and delays in processing them are already reflected in the Average Installation Interval. West Aff. ¶ 161. Thus, establishing a benchmark and remedy for this measure would be unfair double-counting.

c) **Ordering Quality Measurements**

Percentage of Order Flow Through. This would measure the percentage of CLEC orders that pass through Ameritech's ordering interface, and into Ameritech's "back office" or "Legacy" provisioning systems, without need for manual intervention. West Aff. ¶¶ 67-68; West Sch. 1, measure 9. Creating a benchmark and remedies for this

measure would be improper: While flow-through may affect the time between the submission of the order and the time provisioning begins, there are still additional steps involved later on (such as the physical installation). West Aff. ¶ 162. Thus, in the end, flow-through may not affect the time required for the order to be processed, as a whole. *Id.* If it does not, the lack of flow-through does not affect service or the CLEC, and Ameritech Michigan should not be penalized. *Id.* On the other hand, if the lack of flow-through does cause a net delay in installation, that delay would already be captured in the related outcome measure (*e.g.*, Average Installation Interval, or Confirmed Due Dates Not Met). *Id.* It would be unnecessary, and unfair, to punish Ameritech Michigan twice. *Id.* Further, the rate of flow-through is affected by the CLEC's own business choices (*i.e.* a focus on complex orders that require engineering intervention or coordinated activities and thus are not intended to flow through). *See id.* ¶ 67.

Percentage of Rejected Orders. This would measure the rate of CLEC orders that fail to meet edit checks and are returned to the CLEC with a rejection notice. West Aff. ¶¶ 69-71; West Sch. 1, measure 10. Rejections are most often driven by the CLECs themselves, when they submit improper or incomplete orders. West Aff. ¶ 70. As a result, this measure primarily relates to CLEC performance errors and Ameritech Michigan's ability to detect them. *Id.* Ameritech Michigan should not be held responsible for CLEC errors, or for establishing edits to flag them for correction. *Id.* ¶ 164. Rather, Ameritech Michigan's responsibility is to return those errors to the CLEC so that they may be corrected, and that responsibility is addressed by the Average Rejection Notice Interval above.

d) **911 Measurements**

Customer Record Update Files Not Processed by the Next Business Day (Received Manually). Ameritech Michigan submits its update files electronically, and offers the same capability to CLECs. West Aff. ¶ 73. In fact, Ameritech Michigan also

makes available several options for electronic transmission capabilities that it does not use itself. *Id.* Further, Ameritech Michigan provides an electronic capability that allows requesting carriers to conduct their own quality checks, query 911 record data, and consult the Master Street Address Guide. *Id.* These features were added in part to address the concerns raised by this Commission in its comments on Ameritech Michigan's § 271 application, and in Case No. U-11229. *Id.* The speed at which Ameritech Michigan processes electronically submitted 911 updates is measured as a performance outcome above.

Since the processing of manually submitted updates requires human intervention by Ameritech Michigan, such updates are not comparable to those submitted electronically and do not provide a standard for comparison with Ameritech Michigan's own files, which are also submitted electronically. West Aff. ¶ 164. Second, because Ameritech Michigan makes available to CLECs the same electronic capabilities that it uses, if not more, it should not be held responsible for carriers that choose not to take advantage of those capabilities. Third, the Commission should strongly encourage all carriers to support and use the superior electronic processes and capabilities described above. Thus, while Ameritech Michigan is willing to report on the speed of manual updates for informational purposes (West Aff. ¶ 164; West Sch. 1, measure 12) it would not be appropriate to set a benchmark for performance.

Errors in Customer Record Update Files. Ameritech Michigan proposes to measure, for informational purposes, the rate of errors in 911 database update files, both electronic and manual, with a comparison to its own files, which include retail and resale. West Aff. ¶ 75; West Sch. 1, measures 13 and 14. Nevertheless, as with order rejections, Ameritech Michigan is not responsible, and should not be held responsible, for errors made by the CLEC or its agent, nor should it be punished for finding CLEC errors

or for properly preparing its own listings. *Id.* ¶ 164.[4] It must be remembered that the overriding goal is an accurate 911 database.

Erred Customer Record Update Files Not Returned by Next Business Day (Received Manually). The speed of returning erroneous electronic 911 database updates to the CLEC for correction is a performance outcome, and Ameritech Michigan offers to measure it as such, above. Once again, however, Ameritech Michigan should not be held responsible for those CLECs who choose not to use the numerous electronic methods and formats available to them. West Aff. ¶ 164. (Note, for example, that Ameritech Michigan provides to CLECs the electronic means to catch some potential errors before submitting them.) Ameritech Michigan thus proposes to measure, for informational purposes only, the percentage of manually submitted database update files that contain erroneous entries that are not returned by the next business day. West Aff. ¶¶ 77, 164; West Sch. 1, measure 16.

e) **Billing Measurements**

AEBS Bills Delivered Late, and CABS Bills Delivered Late. Ameritech Michigan proposes to report the percentage of monthly bills (segregated by resale and network element bills) not delivered within a specified interval. For resale bills, processed by the Ameritech Electronic Billing System ("AEBS"), Ameritech Michigan offers to measure the percentage of bills not delivered within 12 days of the scheduled billing date. West Aff. ¶ 94; West Sch. 1, measure 22. For network element bills, processed by the Carrier Access Billing System ("CABS"), Ameritech Michigan proposes to measure the percentage of bills not delivered within six calendar days of the scheduled billing date. West Aff. ¶ 94; West Sch. 1, measure 23. There is no reasonable retail analog: Ameritech Michigan bills retail customers directly, without the aggregation,

[4] In its Ameritech Michigan Order (¶ 260, n. 672), the FCC specifically "emphasize[d] that it is not our intention to hold Ameritech responsible for errors made by its competitors."

summarization and formatting required for carrier billing, and the number of monthly retail bills (millions) vastly exceeds the number of carriers. West Aff. ¶¶ 95-96. These measures are indicators, not outcomes: Delays in monthly bills do not affect the quality of CLEC service as it is perceived by end users (because the CLEC can still bill them from usage records) and Ameritech Michigan does not assess finance charges for late payment of delayed bills. West Aff. ¶ 166.

f) **General Measurements**

Speed of Answer. These indicator measurements would provide information as to the amount of time it takes Ameritech Michigan's service centers to answer voice calls from competing carriers. Separate reporting would be provided for Ameritech Michigan's ordering center (West Aff. ¶¶ 98-99; West Sch. 1, measure 25) and repair center (West Aff. ¶¶ 98-99; West Sch. 1, measure 26). Because Ameritech Michigan offers electronic interfaces for CLECs to submit orders and trouble reports, it should not be held responsible to CLECs who nevertheless choose to bypass available electronic interfaces, use the phone and thereby tie up Ameritech Michigan personnel. West Aff. ¶ 165. Furthermore, a strict benchmark for speed of answer would invite CLECs to game the system by flooding Ameritech Michigan's centers with unnecessary calls.

g) **Interconnection Measurements**

Average Time to Provide a Collocation Arrangement. In addition to measuring collocation outcomes — the Average Time to Respond to Physical Collocation Requests, and the Percent of Due Dates Missed with Respect to Collocation Arrangements, both described above — Ameritech Michigan further proposes to report the time from receipt of a firm collocation order to completion (that is, the date that Ameritech Michigan provides notice informing the CLEC that collocation work is complete). West Aff. ¶ 111; West Sch. 1, measure 30. The time for providing collocation is a negotiated interval for each request. West Aff. ¶ 167. Thus, Ameritech Michigan measures the percentage of due dates missed as an outcome above. The

IV. PERFORMANCE BENCHMARKS

This section describes the benchmarks against which the outcome measurements set forth in Section II will be evaluated. For the reasons demonstrated in Section II, performance benchmarks should be established only for performance outcomes, not for the additional indicator measurements to be provided under this proposal.

A. Retail Analogs

Ameritech Michigan uses two approaches for setting performance benchmarks. First, where the wholesale outcome corresponds to an outcome in the retail environment, retail performance sets the benchmark. *See* West Aff. ¶ 168. The following measures are to be compared via statistical analysis to retail performance:

Average Installation Interval (for resale orders) (West Sch. 1, measure 2);

Confirmed Due Dates Not Met (resale) (measure 3);

Installation Trouble Reports (measure 8);

Customer Record Update Files Not Processed by Next Business Day (Received Electronically) (measure 11);

Erred Customer Record Update Files Not Returned by Next Business Day (Received Electronically) (measure 15);

Mean Time to Repair (Resale) (measure 17);

Trouble Report Rate (Resale) (measure 18);

Percent Repeats-Maintenance (Resale) (measure 19);

Percentage of Customer Troubles Not Resolved within the Estimated Time (Resale) (measure 20); and

Call Attempts Blocked (measure 28).

B. Standards

Some wholesale outcomes do not have a retail analog. Outcomes associated with unbundled loops are the most notable examples. West Aff. ¶ 172. Ameritech Michigan

does not unbundle its loops for itself, and provisioning loops requires manual operations and coordination between carriers that differ from the installation of bundled retail service. *Id.* Thus, the FCC has specifically singled out "the ordering and provisioning of unbundled network elements" as examples of "functions that have no retail analogue." *Ameritech Michigan Order*, ¶ 141. There are significant operational differences and additional tasks involved when Ameritech provides a network element on an unbundled basis, as compared to using the same underlying element as one component of an integrated retail service. As a result, comparing the provisioning of unbundled elements to retail services is inapt. The FCC has also recognized these engineering distinctions in ¶ 421 of the First Report and Order.

Where no retail analog exists, wholesale performance is measured against a standard, such as a set period of time. West Aff. ¶ 171. The standard is set at a level that will provide an efficient competitor a reasonable opportunity to compete. *Id.* This is the same approach used by the FCC in evaluating checklist compliance. *Ameritech Michigan Order*, ¶ 141.

Ameritech Michigan developed its proposed standards by reference to three sources. First and foremost, Ameritech Michigan adopted standards from its existing interconnection agreements wherever possible. West Aff. ¶ 173. This approach has two benefits: First, the agreements have been through negotiation and/or arbitration, and the Commission has already approved them (and the performance standards therein) as consistent with the terms and purposes of the 1996 Act. *Id.* Second, existing contractual terms must be preserved and incorporated to remain consistent with the Act under which they were created. *See* Section VI *infra*.

Second, Ameritech Michigan looked to service quality standards used in its reports to this Commission. West Aff. ¶¶ 177-178. Finally, where no contractual or service quality standard applied, Ameritech Michigan performed a process study of each

of the steps leading to the performance outcome to determine the benchmark for performance when those steps are performed efficiently. *Id.* ¶¶ 178-184.

The following table summarizes the benchmarks developed by these methods:

PROPOSED MEASURE	BENCHMARK SOURCE	BENCHMARK
Pre-ordering Average Response Time	Process Study	80 percent within 6 seconds, 9 seconds or 16 seconds, depending on function
Average Installation Interval (loops)	Existing Agreement	80 percent within 5 business days (for orders under 5 loops)
Confirmed Due Dates Not Met (loops)	Existing Agreement	20 percent
Average Reject Notice Interval	Process Study	80 percent within 24 hours
Average Completion Notice Interval	Process Study	80 percent within 48 hours
Installation Trouble Reports (loops)	Service Quality Standard	6 percent
Mean Time to Repair (loops)	Service Quality Standard	36 hours
Trouble Report Rate (loops)	Service Quality Standard and Process Study	4 percent
Percent of Troubles Not Resolved within Estimated Time (loops)	Consistency with standard for Confirmed Due Dates Not Met for loops	20 percent
Percent Repeats - Maintenance (loops)	Process Study	17 percent
Daily Usage Timeliness	Process Study	2 percent over 5 business days
Percentage of Time Interface is Unavailable	Process Study	1 percent
Average Time to Respond to a Physical Collocation Request	Existing Agreement	80 percent within 10 business days
Percent of Due Dates Missed in Provision of Collocation Arrangements	Consistency with standard for Confirmed Due Dates Not Met for loops	20 percent

V. PERFORMANCE REMEDIES

Ameritech Michigan's proposal also includes enforcement mechanisms to address instances where performance fails to meet the appropriate benchmark. Remedies are to be calculated on a quarterly basis, assessing data for each quarter as a whole, so as to encourage parties to quickly resolve blips in performance that appear in the monthly reports, and to reduce the impact of random variations in data. West Aff. ¶ 187. Detailed remedy formulas are set forth in West Schedule 1, under the "Remedy" column, for each outcome measure. Two guiding principles, however, apply to each formula. First, the purpose of this remedial system should be (and lawfully, must be) to compensate CLECs for actual harm sustained as a result of below-standard or discriminatory performance, not to impose penalties or arbitrary punishment on Ameritech Michigan. *Id.* ¶ 186. Second, the remedial system should be designed to reduce the impact of random fluctuations that do not reflect on Ameritech Michigan's performance. *Id.* ¶ 187.

A. Compensating the Affected Carrier

Just as their name suggests, performance measures are designed to monitor the performance of contractual obligations. When one party to a contract fails to perform according to that contract's terms, the other party is entitled to compensation. It is not entitled to a windfall. Nor is the nonperforming party to be punished. *Corl v. Huron Castings, Inc.*, 450 Mich. 620, 626 n.8 (1996) (quoting Farnsworth, *Contracts*, § 12.1, at. 812) ("Our system of contract remedies is not directed at compulsion of promisors to prevent breach; it is aimed, instead, at relief to promisees to redress breach.").

While remedies for nonperformance can be estimated and established in advance, they still must be compensatory. Provisions for estimated or liquidated damages that do not award "just compensation," but instead impose "penalties," are void and unenforceable. *Curran v. Williams*, 352 Mich. 278, 283 (1958).

As a result, Ameritech Michigan does not propose that remedies be based on an arbitrary, fixed dollar amount. West Aff. ¶ 186. Instead, Ameritech Michigan advocates a four-factor formula designed to match the remedy with the extent of compensation required.

The first remedy factor calculates the degree of disparity (*i.e.*, how far performance fell below benchmark), so that the remedy increases in proportion to the degree of underperformance. West Aff. ¶ 192. Second, Ameritech Michigan calculates a monetary amount, either as a portion of the recurring charge associated with the performance outcome in question (*e.g.*, untimely installation of a loop reduces the initial nonrecurring charge, or a portion of the recurring charge for the loop or by using an estimate of the additional expense incurred by the CLEC (*e.g.*, if Ameritech Michigan does not respond to an electronic pre-order inquiry in a timely fashion, it pays an approximation of the CLEC representative's wage for performing that transaction manually). *Id.* ¶¶ 193-198. Third, Ameritech Michigan applies a weighting factor based on the importance of the measure (*e.g.*, the 911 measures receive a higher weight) and the percentage of transactions affected by below-standard performance. *Id.* ¶¶ 199-201. Finally, Ameritech Michigan multiplies the first three factors against a base, calculated as the total volume of applicable transactions, to arrive at the remedy amount. *Id.* ¶ 202. If the calculated amount for a measure is less than a threshold remedy (either $100 or $1,000, commensurate with the measurement's weight) the CLEC would receive the threshold amount in the form of a credit to its bill. *Id.* ¶¶ 203-204.

Applying the general principle of compensation vs. punishment, Ameritech Michigan does not propose to apply the above formula to its measurement of Call Attempts Blocked. As this Commission recognized in its recent *Phone Michigan Order*, blockage situations typically impact to a greater degree Ameritech Michigan's end users, not CLECs. *See also* West Aff. ¶ 206. In that case, it is also significant that a blockage can be caused by a CLEC failure to adequately provide forecasts of interconnection

traffic flows so that Ameritech Michigan can augment existing trunking facilities. *Id.* ¶ 107.

Ameritech Michigan's existing interconnection agreements already contain remedy amounts for failure to meet certain performance benchmarks, some of which overlap with the remedies proposed here. West Aff. ¶ 205. As these agreements expire, the market will naturally make an orderly transition to the remedial system advanced in this proposal. *Id.* In the meantime, Ameritech Michigan proposes that a CLEC may elect between their current contractual remedy amount and the remedy calculated under this proposal. *Id.* Of course, no CLEC would be allowed to choose both of the overlapping remedies — *i.e.* to eat its cake and have it too. Double payments are not just compensation.

B. Reducing the Impact of Random Error

Whether performance is measured against retail or against a set benchmark, the focus should be on overall performance. The performance on some individual transactions may fail to meet standard due simply to random chance, or to normal market or environmental fluctuations outside of Ameritech Michigan's control. These should not be attributed to Ameritech Michigan. After all, the goal is to provide a high likelihood that remedies will be assessed where discrimination exists, while providing a low likelihood that remedies will be assessed where discrimination does not really exist.

1. Quarterly Assessment

Ameritech Michigan proposes that remedies be computed and assessed on a quarterly basis, using data for the quarter as a whole. This keeps the parties focused on long-run service trends, as opposed to nonrecurring short-term events. West Aff. ¶ 187. The long-run perspective is the one that most benefits the end user. *Id.* It also creates an incentive to correct minor issues before they become serious, again to the benefit of the

end user. *Id.* Finally, it results in a greater pool of data, which increases the reliability of statistical analysis and reduces the risk that isolated transactions will have a disproportionate impact. *Id.*; Levy Aff. ¶ 46. Ameritech Michigan also proposes that any claims by a CLEC concerning remedies must be asserted no later than the end of the quarter following the quarter to which the claim relates.

2. **Statistical Analysis**

Where performance is measured against retail analogs, statistical analysis is required to address the impact of random fluctuations that do not reflect on Ameritech Michigan's performance. The attached affidavit of Dr. Daniel S. Levy, an expert in economics and statistics, demonstrates why such analysis is required. A perfectly fair coin flip is nondiscriminatory, but tossing it 100 times does not guarantee 50 heads and 50 tails. Likewise, if one measures different samples of performance results from the universe of Ameritech Michigan's own retail transactions, the results are different even though no discrimination could have occurred. Levy Aff. ¶ 21. Performance measurement is important, but proper analysis must be applied to the results to avoid reaching the wrong conclusion.

Dr. Levy's affidavit also describes a simple, workable approach to statistical analysis that can be performed using any one of several commercial spreadsheet programs. The basic tenets of Ameritech Michigan's approach are simply applications of generally accepted statistical techniques: Wholesale and retail results will be analyzed using the standard "z" test, which computes an index for comparing measurement results from different sources of data. Levy Aff. ¶¶ 38-40; *see also* West Aff. ¶ 190. A minimum of 30 transactions (generally accepted as the threshold for statistically valid analysis; in some cases the minimum may be higher) would be required for the measurement and CLEC in question for that quarter. Levy Aff. ¶ 43. Where wholesale results are more favorable than Ameritech Michigan's retail results, no remedy need be assessed. *Id.* (Because the test focuses only on wholesale results that are less favorable

than retail, it is called a "one-tailed" test. Levy Aff. ¶ 41; West Aff. ¶ 190.) The z test will compute a "safe harbor" level of performance based on the day-to-day random variation that is observed in the results. *Id.* The safe harbor will be set such that when performance is nondiscriminatory, random variation is expected to cause remedy payments only 5% of the time. Levy Aff. ¶ 42; West Aff. ¶ 190.

3. Percentage Thresholds

Where performance is measured against a set standard, a remedy should be applied only when a threshold percentage of transactions fails to meet standard. As with statistical analysis, this addresses the impact of isolated transactions that do not bear on Ameritech Michigan's overall performance. West Aff. ¶ 190. Similarly, a minimum 30 transactions would be required. *Id.* ¶ 191.

4. Second-Stage Analysis

The preceding sections propose a straightforward, workable method for measuring performance, assessing the results, and calculating remedies for apparent disparities in performance. Ameritech Michigan's remedial system is designed to be self-executing: Ameritech Michigan will pay remedies automatically to CLECs, in accordance with the formulas proposed.

Yet the fast answer is not always the right one, and the reality of wholesale and retail operations is not always straightforward, the way that simple math can be. Statistical analysis and percentage thresholds may reduce the risk of error, but they cannot eliminate it entirely. Further, performance measurement, evaluation, and remedies do not identify or address the root causes of performance issues, and they do not offer long-run solutions. Investigation and analysis may reveal that the apparent deficiency in performance is not really attributable to Ameritech Michigan. West Aff. ¶ 209; Levy Aff.

¶¶ 12-13. Even if it is, identifying the source of the problem is a necessary first step to resolving it. West Aff. ¶ 209.

A simple example will illustrate the need for second-level analysis, and the danger of succumbing to the simplicity of a mathematical first-level analysis. Assume that Ameritech Michigan and a CLEC each experience 100 "trouble reports" in a month, and that standard statistical analysis of performance reveals that the mean time to repair for Ameritech Michigan customers was 3.4 hours with a variance of 0.0145, while the CLEC's customers experienced a mean time of 5.0 hours with a variance of 0.0404. A simple measure of the difference in this case would reveal a difference of 1.6 hours, which might suggest possible discrimination even after first-level statistical analysis.

A second-level analysis, however, might reveal that the time to restore service — for CLEC and Ameritech Michigan customers alike — is always exactly 3 hours if service is disrupted on a sunny day and is always exactly 7 hours if service is disrupted on a rainy day. It might also show that 90 percent of Ameritech Michigan's customers reported service disrupted on sunny days, but only half of the CLEC's customers reported a service outage on those days. Given 3 hours to restore "fair weather" service versus 7 hours to restore rainy-day service, it is entirely proper for Ameritech Michigan's customers to have service restored in 3.4 hours on average (3 hours multiplied by 90%, plus 7 hours multiplied by 10%), and for the CLEC's customers to have service restored in 5.0 hours on average (half in three hours, and half in seven hours). Thus, the apparent disparity in this example is entirely attributable to differences in weather patterns and in the days on which service calls were received, not to any discrimination on the part of Ameritech Michigan.

Given the potential for error in a first-level analysis, and the overriding principle that remedies may be imposed only where they are truly warranted, Ameritech Michigan proposes a two-stage process for performance remedies. The statistical techniques and percentage thresholds described above would be applied to quarterly performance data.

Failure to meet the applicable benchmark would result in a rebuttable presumption of discrimination, and remedies would be calculated and paid automatically, pursuant to the formula set forth above. West Aff. ¶ 210.

Ameritech Michigan would then be entitled to investigate the source of the apparent disparity, with the CLEC's cooperation. *Id.* Should this investigation reveal that the apparent disparity does not really reflect substandard performance, part or all of the previously-assessed remedy should be returned to Ameritech Michigan. *Id.* The procedure for such recovery is already at hand: the parties would simply employ the dispute resolution provisions contained in their existing agreements. *Id.*

VI. PERFORMANCE MEASUREMENT MUST BE ADDRESSED WITHIN THE PROCESS OF NEGOTIATION, ARBITRATION AND JUDICIAL REVIEW ESTABLISHED BY THE 1996 ACT.

The preceding sections lay out Ameritech Michigan's holistic approach to issues of performance. While these issues are of unquestioned importance, there remains the equally important question of implementing a solution while remaining true to the de-regulatory framework established by the 1996 Act, and to the business relationships and expectations developed in two years of interconnection agreements under the Act. This section offers Ameritech Michigan's answer to that question.

The 1996 Act does not create obligations in a vacuum. Nor does it authorize state commissions to unilaterally impose performance and reporting requirements. To the contrary, the Act creates a de-regulatory process of private negotiation, State commission arbitration, and federal court review. The carrier-specific interconnection agreements that result from this contractual process give meaning and life to the provisions set forth in the 1996 Act.

Performance measures are, at most, a means of monitoring and enforcing these contractual obligations, and as such, can be properly defined only by the process in which

those obligations were defined in the first place: negotiations by private parties with Commission arbitration where necessary, and with federal court review of State commission determinations.

The structure of the Act confirms that performance measures are to be determined by contract, not rules. If such measures have any toehold at all in the 1996 Act (which nowhere uses the terms "performance measures," or any reasonable facsimile thereof), they relate to the "terms and conditions" of a carrier's provision of resold services, unbundled network elements or interconnection. And where the 1996 Act refers to terms and conditions, it uses them hand in hand with "agreements" — a subject left to the process of private negotiation, State arbitration, and federal court review — or with "rates," which are defined by that same process. See § 251(c)(1) (describing duty to negotiate "terms and conditions of agreements to fulfill the duties described" in § 251, in accordance with process of negotiation and arbitration set forth in § 252); § 251(c)(2) (D) (referring to "rates, terms, and conditions of interconnection); § 251(c)(3) (referring to "rates, terms, and conditions" of provision of unbundled network elements); § 251(c)(6) (referring to "rates, terms, and conditions" of collocation).

The conjunction in §§ 251 and 252 of rates, terms, and conditions is no accident: Just as it makes no sense to prescribe measures for enforcing contractual obligations in a vacuum — that is, without simultaneously defining and considering what the contractual obligations will be — it makes no sense to set terms and conditions for an item's provision without simultaneously setting the rates at which provision will take place. Under the contractual, deregulatory framework envisioned by the 1996 Act, price and cost are linked to terms and conditions. That is why the price of raw hamburger differs from the price of cooked filet mignon.

The FCC has recently, and emphatically, confirmed the paramount importance of binding agreements in the precise context of performance. In its October 13, 1998 order on BellSouth's second application to provide long-distance service in Louisiana, the FCC

specifically stated that "evidence th at a BOC has agreed to performance monitoring (including performance standards and reporting requirements) in its interconnection agreements with new entrants would be probative evidence that a BOC will continue to cooperate with new entrants, even after it is authorized to provide in-region, interLata services." *In re Application of BellSouth Corp. et al. for Provision of In-Region, InterLATA Services in Louisiana,* Memorandum Opinion & Order, CC Docket No. 98-121, ¶ 363 (Oct. 13, 1998).

Two years of consistent practice under the 1996 Act confirm the existence, and desirability, of relying on contractual arrangements between private parties to define performance measures and benchmarks. During this time, Ameritech Michigan, its competitors, and this Commission, have all worked together to establish and define numerous performance measures using the process of negotiation, arbitration, Commission approval, and judicial review set forth in the 1996 Act. Under this de-regulatory framework, carriers assumed "[t]he duty to negotiate in good faith in accordance with section 252" binding agreements to fulfill the obligations described in sections 251(b) and 251(c). The subject of performance measures has been intensely negotiated and arbitrated. And just as the Act envisions, performance measures and benchmarks have been resolved as important contractual obligations. Even after performance measures were negotiated, arbitrated and embodied in agreements, Ameritech Michigan has continued to work with CLECs in routine business meetings and performance reviews to determine if new or different measurements would be meaningful and productive additions to their business relationship, or if further definition and clarity were all that was required. *See* West Aff. ¶¶ 13-20.

These carrier-specific agreements properly reflect the give and take that is inherent to contracts and antithetical to the one-sided, prescriptive regulatory fiat structure that Congress rejected. Contractual performance measures balance the real business needs specific to each competitor while accommodating the practical limitations

of feasibility and cost-effectiveness facing Ameritech Michigan. One-sided regulations do neither.

In particular, the question of remedies for performance that does not meet contractual benchmarks cannot be answered in an abstract regulatory proceeding. After all, these remedies are nothing but provisions for liquidated damages, which are legally enforceable only where the amount stipulated is reasonable with relation to the possible injury suffered. And there is no way to measure the possible injury and appropriate compensation other than on an individualized, contract-specific basis. *See Curran v. Williams*, 352 Mich. 278, 283 (1958):

> The purpose in permitting a stipulation of damages as compensation is to render certain and definite that which appears to be uncertain and not easily proven. The courts recognize that the parties, particularly at the time of execution of the instrument, are in as good a position as anyone to arrive at a fair amount of damages for a subsequent breach. In the event they are not unconscionable or excessive courts will not disturb it. Just compensation for the injuries sustained is the principle at which the law tends to arrive. Courts will not permit parties to stipulate unreasonable sums as damages, and where such an attempt is made has held them penalties and therefore void and unenforceable. (Emphasis added.)

A prescriptive, rule-making approach to performance would not only frustrate the Act's process of negotiation, arbitration, and judicial review, but also contravene the contractual arrangements that have been created pursuant to that process. Ameritech Michigan's competitors would no doubt attempt to use one-sided regulation as a forum for obtaining unbargained-for performance benchmarks where their contracts have none, or for obtaining a windfall in the form of more advantageous benchmarks or remedies than their contracts currently provide. Either result would impair (and effectively amend) existing contractual relationships and violate the Act under which those relationships were created. Further, an endless list of measurements, each with pages and pages of explanations as to how, when, and to what they apply, would serve no business purpose.

A serious competitor is intensely focused on what makes a difference to its business operation.

Section 252(a)(1) of the 1996 Act provides that agreements are "binding." Section 252(b)(4)(C) provides that arbitrations "shall resolve" open issues between contracting parties. Forced revision by regulation would render agreements nonbinding, and would undo the resolution of issues preferred in arbitration. Neither result is consistent with the structure and purposes of the 1996 Act.

In short, there is no need to reinvent the wheel or to jettison existing contractual arrangements in midstream, and no lawful way to balance a regulatory approach to performance measures with the de-regulatory process set forth in the Act and implemented by this Commission. The only way to proceed in the area of performance measures is to work within the Act's de-regulatory, pro-competitive framework. Ameritech Michigan therefore recommends that the performance measurement plan that it has proposed be adopted — not in the form of binding rules, because such rules cannot be applied without contravening the 1996 Act, but in the form of a model measurement plan that can serve as the baseline for future negotiations and arbitrations under the Act. Nevertheless, to give prompt effect to the performance proposals set forth herein, Ameritech Michigan commits that it will offer to amend its existing interconnection agreements to incorporate the terms of those proposals upon adoption by the Commission.

CONCLUSION

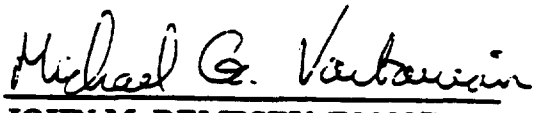
A sound performance management plan establishes the structure and processes that will monitor and measure key business operations. It should allow the parties to address blips in data by routine business-to-business discussions before an "out of parity" finding or business-affecting failure occurs. Root cause analysis driven from tracking the indicators should also help to prevent performance outcome misses.

A regulatory overlay on business agreements is not the answer. The 1996 Act and the resulting interconnection agreements have defined the new paradigm. Ameritech Michigan's plan works within that structure, with sufficient detail and appropriate

incentives to keep both parties engaged in and focused on providing quality service. And that must be the ultimate objective.

Respectfully submitted,

AMERITECH MICHIGAN



JOHN M. DEMPSEY (P30987)
MICHAEL G. VARTANIAN (P23024)
Dickinson Wright
215 S. Washington Square, Suite 200
Lansing, MI 48933
(517) 487-4763

CRAIG A. ANDERSON (P28968)
444 Michigan Avenue, Room 1750
Detroit, Michigan 48226
(313) 223-8033

THEODORE LIVINGSTON
CHRISTOPER BINNIG
DEMETRIOS METROPOULOS
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, IL 60603
(312) 782-0600

DATED: November 2, 1998